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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 ALFREDO MACIAS,)	Nos. 07cv2433-LAB
	)	06cr2038-LAB
14 Defendant-Petitioner,)	
	)	EXPARTE MOTION FOR 30-DAY
15 v.	)	EXTENSION OF TIME TO RESPOND
	)	TO DEFENDANT'S MOTION
16 UNITED STATES OF AMERICA,	)	PURSUANT TO 28 U.S.C. § 2255
)	
17 Plaintiff-Respondent.)	
18)	

19 Plaintiff-Respondent United States of America, by and through its counsel, Karen P. Hewitt,
20 United States Attorney, and Davene L. Finnel, Special Assistant U.S. Attorney, hereby moves this
21 Court for an extension of time until March 31, 2008, to file its response to the above-captioned
22 motion pursuant to 28 U.S.C. § 2255. This motion is based on the files and records of this case,
23 together with the attached Declaration of Davene L. Finnel, Special Assistant U.S. Attorney.

24 DATED: February 26, 2008

Respectfully submitted,

25 KAREN P. HEWITT
26 United States Attorney

27 /s/ Davene L. Finnel
28 DAVENE L. FINNEL
Special Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

ALFREDO MACIAS,)	Nos. 07cv2433-LAB
	)	06cr2038-LAB
Defendant-Petitioner,)	
	)	DECLARATION OF DAVENE L. FINNEL
v.	)	IN SUPPORT OF GOVERNMENT'S
	)	EX PARTE MOTION FOR 30-DAY
UNITED STATES OF AMERICA,	)	EXTENSION OF TIME TO FILE
	)	RESPONSE TO PETITIONER'S MOTION
Plaintiff-Respondent.	)	PURSUANT TO 18 U.S.C. § 2255
)	

I, Davene L. Finnel, declare as follows:

1. I am a Special Assistant United States Attorney for the Southern District of California.
2. On or about August 17, 2006, Alfredo Macias ("Macias") attempted to smuggle approximately 10.22 kilograms of cocaine from Mexico into the United States through the Otay Mesa Port of Entry. [CR 1.] On September 19, 2006, Macias waived indictment and was arraigned on an Information charging him with violating 21 U.S.C. §952 and 960 (importation of cocaine). [CR 10.] On October 3, 2006, Macias pled guilty, by way of a written Plea Agreement. Macias waived his right to appeal and collaterally attack his sentence and conviction unless the Court imposed a custodial sentence greater than the high end of the guideline range recommended by the

1 Government pursuant to the plea agreement. [CR 12.] On April 2, 2007, Macias was sentenced
2 to 50 months' custody, to be followed by five years of supervised release. [CR 32.]

3 3. On December 28, 2007, Macias filed a petition for writ of habeas corpus under 28
4 U.S.C. § 2255, claiming (1) the district court failed to identify 'crusial' [sic] factors calling for
6 departure from the guidelines [sic] factors set out in 18 U.S.C. Section 3553(a); and (2) violation
7 of his Sixth Amendment right to effective assistance of counsel. [CR 34.]

8 4. On January 14, 2008, an Order was filed in the district court directing the
9 Government to file an response to the above-referenced petition, on or before February 22, 2008.
10 [CR 35.]

11 5. On or about March 20, 2006, the undersigned was assigned to handle the sentencing
12 hearing which was scheduled for April 2, 2006. The undersigned had not filed a Notice of
13 Appearance in this case. As a result of this oversight, the undersigned did not receive electronic
14 case file notification regarding the filing of the petition for writ of habeas corpus under 28 U.S.C.
15 § 2255 or the Court's Order directing a response to the petition. In addition, the undersigned had
16 not received hard copies of the same. Furthermore, the appellate section of the United States
17 Attorneys Office had not receive copies of the same. As a result, the undersigned was unaware that
18 the petition had been filed and an Order had been issued by the Court.

19 6. On February 25, 2008, the undersigned was notified by the Court's staff regarding
20 the Court's Order in this case. The Government believes that it is necessary to order the transcripts
21 of the guilty plea and sentencing hearings to answer Macias' claim that he was denied effective
22 assistance of counsel. The transcripts have been ordered and expected to be delivered within two
23 weeks.

24 6. If the Court were to grant the Government an extension of time until March 31, 2008,
25 this would allow approximately two weeks for the undersigned to prepare the response.

26 7 According to the Bureau of Prison's Inmate Locator, Macias' projected release date
27 is November 2, 2010.
28

1
2 8. For the above-cited reasons, it is therefore requested that the Government receive an
3 extension of time until March 31, 2008, within which to file its response to Petitioner's motion.

4 I declare under penalty of perjury that the above is true and correct to the best of my
5 knowledge, information and belief.
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7

8 DATED: February 26, 2008.
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10 /s/ Davene L. Finnel
11 DAVENE L. FINNEL
12 Special Assistant U.S. Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALFREDO MACIAS)	Nos. 07cv2433-LAB
	)	06cr2038-LAB
Defendant-Petitioner,)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff-Respondent.)	

IT IS HEREBY CERTIFIED THAT:

I, am a citizen of the United States over the age of eighteen years and a resident of San Diego County, CA; my business address is 880 Front Street, Room 6293, San Diego, CA 92101-8893; I am not a party to the above-entitled action; and

I deposited in the United States mail at San Diego, California, in an envelope bearing the requisite postage, a copy of the Government's Ex Parte Application for Extension of Time Within Which to File a Response to Defendant's Motion Pursuant to 18 U.S.C. § 2255, addressed to: Alfredo Macias, No. 99945-198, California City Correctional Center, P. O. Box 3001-0001, California City, CA 93504, the last known addresses, at which places there is delivery service of mail from the United States Postal Service.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2008.

Ginger Stacey